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WAYNE BERRY

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

FEB 3 2003
at 3 o'clock and 35 min. M.
WALTER A. Y. H. CHINN, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

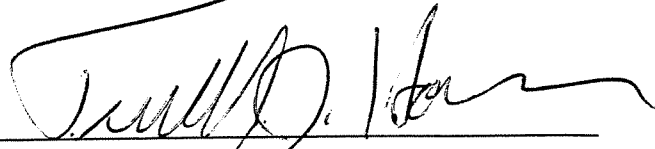
WAYNE BERRY,)	Civ. No. CV01-00446 SPK LEK
)	(Copyright)
Plaintiff,)	
)	PLAINTIFF'S FIRST PROPOSED
)	SPECIAL VERDICT FORM
FLEMING COMPANIES, INC., aka)	
FLEMING FOODS, INC., aka)	
FLEMING, HAWAIIAN EXPRESS)	
SERVICE, INC., DOE)	
DOE PARTNERSHIPS,)	
CORPORATIONS AND OTHER)	
ENTITIES 1-20 S 1-50,)	
)	
Defendants.)	TRIAL:
)	DATE: February 24, 2003
)	TIME: 9:00 a.m.
)	JUDGE: Hon. Samuel P. King

PLAINTIFF WAYNE BERRY'S
FIRST PROPOSED SPECIAL VERDICT FORM



Exhibit C

DATED: Honolulu, Hawai'i FEB 3 2003.

A handwritten signature in black ink, appearing to read "Timothy J. Hogan", written over a horizontal line.

Timothy J. Hogan
Attorney for Plaintiff
Wayne Berry

Berry v. Fleming Companies, Inc., CV 01-00446SPK/LEK
SPECIAL VERDICT FORM

1. Is Plaintiff Wayne Berry the owner of the Copyright to "Freight Control System" Copyright Registration Number TX5-079 Exhibit 69 (the "Freight Control System")?

Yes____ No____

If you answered "YES" to Question Number 1, then answer Question Number 2. If you answered "NO" to Question Number 1, proceed to Question Number 4.

2. Did Defendant Fleming Companies, Inc. ("Fleming") infringe on Plaintiff Wayne Berry's Copyright to the "Freight Control System"?

Yes____ No____

If your answer to Question Number 2 is "YES," answer Question Number 3. If your answer to Question Number 2 is "NO," proceed to Question Number 4.

3. How many infringing copies of Freight Control System, if any, did the Defendant Fleming make ?

Proceed to Question Number 4.

4. Is Plaintiff Wayne Berry the owner of the Copyright to "Invoice Definition For Prepaid Vendor Invoice Definition for Crystal Reports" Copyright Registration Number TX5-268-865 Exhibit 70 (the "Crystal Reports Invoice")?

Yes____ No____

If you answered "YES" to Question Number 4 then answer Question 5. If your answer to Question Number 4 is "NO," proceed to Question Number 7.

5. Did Defendant Fleming infringe on Plaintiff Wayne Berry's Copyright to the "Crystal Reports Invoice?"

Yes____ No ____

If your answer to Question Number 5 is "YES", answer Question Number 6. If your answer to Question Number 5 is "NO", proceed to Question Number 7.

6. How many infringing copies of "Crystal Reports Invoice," if any, did the Defendant Fleming make ?

Proceed to Question Number 7.

7. Is Plaintiff Wayne Berry the owner of the Copyright to "FlemingPO.exe" Copyright Registration Number TX5-079-439 Exhibit 71 ("FlemingPO.exe")?

Yes____ No ____

If you answered "YES" to Number 7 then answer Question Number 8. If your answer to Question Number 7 is "NO," proceed to Question Number 10.

8. Did Defendant Fleming infringe on Plaintiff Wayne Berry's Copyright to the "FlemingPO.exe"?

Yes____ No ____

9. How many infringing copies of "FlemingPO.exe," if any, did Defendant Fleming make ?

Proceed to Question Number 10.

10. What is the total of all infringing copies in your answers to Questions Numbers 3, 6 and 9? (If you did not answer Questions 3, 6 or 9, the number is zero for those Questions 3, 6 and 9 for which you did not provide an answer).

If each and every of your answers to Questions Numbers 2, 5 and 8 is "NO" then you are finished. The Jury Foreperson should date and sign this Special Verdict Form and then call the Bailiff.

If any one or all of your answers to Questions Numbers 2, 5 or 8 is "YES," proceed to answer all of the following Questions.

11. What are Plaintiff Wayne Berry's Actual Damages, if any, for all acts of infringement?

\$ _____

12. What are Plaintiff Wayne Berry's damages, if any, based on Defendant Fleming's profits derived from the use of Plaintiff Wayne Berry's software?

\$ _____

13. How many of the copies, if any, in you answer to Question Number 10 were made through wilful infringement?

14. Determine the amount of per copy of wilful infringement damages between \$750 and \$150,000 per copy you find is justified.

15. How many of the copies, if any, in your answer to Question Number 10 were made through non-wilful infringement?

16. Determine the amount of per copy non-wilful infringement damages between \$750 and \$30,000 per copy you find is justified.

You are done. The Jury Foreperson should sign and date this Special Verdict Form and call the Bailiff.

Dated: Honolulu, Hawai'i _____.

Jury Foreperson